

(23)  
No. 90-1912

Supreme Court, U.S.

FILED

JAN 31 1992

OFFICE OF THE CLERK

In the Supreme Court  
OF THE  
**United States**

OCTOBER TERM, 1991

STEPHANIE NORDLINGER,  
*Petitioner,*

v.

KENNETH HAHN, in his capacity as  
Tax Assessor for Los Angeles County,  
and the COUNTY OF LOS ANGELES,  
*Respondents.*

On Writ Of Certiorari to the  
Court of Appeal of the State of California

**BRIEF OF THE CALIFORNIA TAXPAYERS'  
ASSOCIATION AS AMICUS CURIAE IN  
SUPPORT OF RESPONDENTS**

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**STATEMENT OF INTEREST AND  
SUMMARY OF ARGUMENT**

I.

**Statement of Interest.**

The California Taxpayers' Association ("Cal-Tax") is a nonpartisan, California nonprofit corporation formed in 1926 and operated continuously since that time to serve its members and the citizens of California by protecting taxpayers from unnecessary and unwarranted taxes and financial burdens and by promoting efficient quality governmental services. Cal-Tax currently represents nearly 900 corporate and individual members and approximately

30 local organizations by serving as a taxpayers' clearing-house, a tax policy research institute and an advocate for taxpayer interests in the legislative, executive and judicial arenas. Cal-Tax is the only statewide association in California with the exclusive mission of protecting the interests of taxpayers and promoting efficient government. Its staff of advocates attempts to influence legislation, government policy and administrative decisions of concern to all California taxpayers. Its research staff studies complex economic issues with emphasis on those relating to public revenue and expenditures.

Cal-Tax is regarded as an authoritative voice by legislatures, governmental leaders, media and others seeking accurate information about taxes and public spending in California. Since the adoption of Article XIII A of the California Constitution (herein referred to as "Proposition 13") by the voters of California in 1978, Cal-Tax has constantly studied the law and its effects on taxpayers and governmental spending in California. Therefore, Cal-Tax is knowledgeable and well-versed in the substantive issues affecting California taxpayers in this matter. As a result of its studies regarding Proposition 13, Cal-Tax has concluded that the provisions of Proposition 13 are good for the State of California and its taxpayers. Cal-Tax believes that the preservation of the acquisition value method of assessment adopted by Proposition 13 is necessary to preserve the fiscal integrity of California government and that the method represents sound public policy. Cal-Tax thus joins with Respondents in requesting that this Court uphold the provisions of Section 2(a) of Proposition 13.<sup>1</sup>

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<sup>1</sup>This *amicus* brief is filed with the consent of Petitioner and Respondents. Letters of consent will be concurrently lodged with the Clerk of the Court.

## II.

### Summary of Argument.

Proposition 13 was adopted by California voters by initiative in 1978, when the local per capita property tax in California ranked fourth in the United States.<sup>2</sup> At that time, California's property tax system required that all property be assessed based upon its current market value.<sup>3</sup> In 1977, property taxes provided 40% of local revenues.<sup>4</sup> Calls for property tax reform were prevalent in California during the 1970's, increased by the rapidly escalating real estate market beginning around 1974 and 1975.<sup>5</sup> A number of property tax reforms were proposed

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<sup>2</sup>Koch, *The 800-Pound Gorilla We Know*, Los Angeles Lawyer 27, 30 (January, 1992) (hereinafter cited as "Koch").

<sup>3</sup>Cal. Const. art. XIII, § 1(a). Proposition 13 added Article XIII A to the California Constitution. Section 2(a) of Article XIII A redefined value for assessment purposes as the 1975-76 roll value "or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." In fact, prior to Proposition 13, California assessors used a cyclical reassessment program. Cal. Rev. & Tax. Code § 405.5 (West 1987); 1976 Cal. Stat. ch. 1046. Former Section 405.6 of the Revenue & Taxation Code required no more than a five-year cycle. See Cal. Assembly Rev. & Tax. Comm., *Implementation of Proposition 13, Volume 1, Property Tax Assessment* 1 (October 29, 1979).

<sup>4</sup>Report of the Senate Commission on Property Tax Equity and Revenue 17 (1991) (hereinafter cited as "Senate Commission Report").

<sup>5</sup>California Assembly Rev. & Tax. Comm., *Report of the Task Force on Property Tax Administration* 9 (January 22, 1979) (hereinafter cited as "Task Force Report"). The Task Force was formed following adoption of Proposition 13 to study existing statutes in light of Proposition 13 and to make recommendations as to appropriate law changes. Its members included county assessors, county tax counsels,

both by initiative and by the California Legislature, the final effort coming in 1977 when the Legislature rejected Senate Bill 154, the subject of a lengthy and controversial conference.<sup>6</sup>

Proposition 13 was qualified for the ballot in 1978 by Howard Jarvis and Paul Gann. A competing proposal by the Legislature on the same ballot promised a 30% reduction in taxes. Probably aided in part by the release of new assessments just prior to the election showing large increases in assessed value for many taxpayers, the electorate rejected the Legislature's proposal and overwhelmingly adopted Proposition 13. The stated purpose of the proposition was to make property taxes "fair, equal and within the ability of the taxpayer to pay."<sup>7</sup>

Immediately following its adoption, Proposition 13 was challenged in the California Supreme Court and upheld. *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208, 583 P.2d 1281, 149 Cal.Rptr. 239 (1978). With respect to an Equal Protection attack on the provisions of Section 2(a), establishing an "acquisition value" approach to property taxation, the California Supreme Court found as follows:

"This 'acquisition value' approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps

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private tax attorneys, State Board of Equalization staff, legislative staff, administrative staff and representatives of bankers, title companies, retailers and taxpayer associations.

<sup>6</sup>See *Senate Commission Report* at 23; Koch at 30-31.

<sup>7</sup>See *Task Force Report* at 137 (containing portions of the June 1978 Ballot Materials relating to Proposition 13).

unduly inflated, current value. Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach. For example, a taxpayer who acquired his property for \$40,000 in 1975 henceforth will be assessed on the basis of that cost (assuming it represented the then fair market value). This result is fair and equitable in that his future taxes may be said reasonably to reflect the price he was originally willing and able to pay for his property, rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control."

*Id.* at 235, 583 P.2d at 1293, 239 Cal.Rptr. at 251.

In so holding, the court relied upon the previous decisions of this Court permitting wide flexibility to states in enforcement and interpretation of their tax laws and recognizing that such laws would withstand an Equal Protection challenge if classifications in the system were founded upon a reasonable distinction, or difference in state policy, not in conflict with the Federal Constitution. *Id.* at 234, 583 P.2d at 1293, 239 Cal.Rptr. at 251 (quoting *Kahn v. Shevin*, 416 U.S. 351 (1974)).

In the more than 13 years since the adoption of Proposition 13, its provisions have survived numerous legislative and initiative modifications and attempted modifications, administrative interpretations and dozens of cases.<sup>8</sup> The attack in the instant case is based primarily on this Court's holding in *Allegheny Pittsburgh Coal Co. v. County Commissioner of Webster County, West Virginia*,

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<sup>8</sup>Ancel, *Is California's Property Valuation System Constitutional?*, 1 J. of Multistate Tax. 73 (1991).

488 U.S. 336 (1989). The decision in *Allegheny Pittsburgh*, however, does not require, or indeed suggest, that the "acquisition value" provisions of Proposition 13 are invalid, since the reasonable and valid public policies first recognized by the California Supreme Court after the adoption of Proposition 13 effectively rebut any Equal Protection challenge. Amicus believes that the policies of relating tax burden to cost of property (an indication of ability to pay) and adding predictability to the property tax system, together with the additional policy of providing stability to property tax revenues, are valid, sound and reasonable, and that, therefore, the Constitutional challenge of Petitioner must fail.

## ARGUMENT

### I.

#### **Proposition 13 is Based on Sound and Reasonable Policies and thus Does Not Violate the Equal Protection Clause.**

The challenge to Proposition 13 before this Court rests upon a fundamental argument that the system creates unequal treatment of similarly situated taxpayers and therefore results in a denial of Equal Protection. What Proposition 13 actually does, however, is create classes of taxpayers based upon the acquisition date of property, and prescribe taxation based upon the value of the property as of that date. Thus, rather than a current market value system, which is the basis of most property tax systems in the United States, California has chosen to use an "acquisition value" system. The issue, then, is whether that system, and the classifications it creates, violates the Equal Protection Clause of the Fourteenth Amendment.

#### **A. California And Other States Must Be Given Great Leeway In Formulating Tax Policy.**

It has long been recognized that states have wide discretion in formulating tax policy, and that a state may create classifications for tax purposes provided the classifications are not arbitrary and capricious and are based upon a reasonable policy distinction. *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526 (1959). Classifications "must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). Thus, the Equal Protection limitation on a state's ability to fashion its tax laws does not "prevent variety in methods of taxation, or discretion in the selection of such, or classification for purposes of taxation of either properties, businesses, trades, callings, or occupations." *Brown-Forman Co. v. Kentucky*, 217 U.S. 563, 572 (1910). Furthermore, "[i]f the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law." *Id.* at 573.

Under the rational basis test, which has "weathered nearly a century of Supreme Court adjudication," *Kahn v. Shevin*, 416 U.S. 351, 355-356 (1974), the acquisition value method under Proposition 13 must be upheld. There are at least three sound policy reasons for adopting an acquisition value system rather than a current market value system. Two of these reasons were clearly recognized in the decision of the California Supreme Court in *Amador Valley*. The concern of the voters in adopting Proposition 13 was that the *ad valorem* system in place at the time, a system to which Petitioners presumably would have California return, was completely failing. In spite of

numerous attempts, a meaningful legislative reform of the system did not occur. Homeowners were literally being taxed out of their homes. It is not surprising, then, that the system overwhelmingly approved in 1978 was one which attempted to curb the compounding inflationary effects of rapidly escalating property prices in the 1970's.<sup>9</sup>

#### **B. Proposition 13 Properly Ties Tax Burden To Cost And Adds Predictability To The Property Tax System.**

Through the limitations provided by Section 2(a), California achieved two goals. First, a home purchaser could know with some certainty the magnitude of his tax burden for the future, for so long as he owned that property. Secondly, the limitation directly tied the amount of taxes to be collected to the price paid by that particular taxpayer, thus linking tax burden with the amount the taxpayer was originally willing and able to pay for his property. These provisions removed the fear that future taxes would be controlled by an inflated value, representing unrealized "paper gains," and based on activity in the real estate market and other economic factors over which the taxpayer had no control. Although the system is one of classifications, each property owner being in a class with each other property purchasers on that day, it is not discriminatory. There is no discrimination since each property owner is assessed and taxed in accordance with the same formula, that is, "on an acquisition value basis predicated on the owner's free and voluntary acts of purchase." *Amador Valley Joint Union High School Dis-*

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<sup>9</sup>From 1973-74 to 1977-78, assessed values grew at a rate of 12.5 percent per year. The median price of a California home increased from \$31,530 in 1973 to \$62,430 in 1977. *Senate Commission Report* at 23.

*trict v. State Board of Equalization*, 22 Cal.3d 208, 235, 583 P.2d 1281, 1293, 22 Cal.Rptr. 239, 251 (1978). That such a system may result in some perceived unfairness through the taxation of identical properties at different amounts is Constitutionally insignificant, since the test for Constitutional purposes is whether a rational basis exists for the differentiation.

A home purchaser in California knows that his share of property taxes will be directly and continuously related to the value of the property at the time of acquisition until he disposes of the property. The value of the property is presumed to be the price paid.<sup>10</sup> It is certainly reasonable to assume that the price paid is an indication of the property owner's ability to pay. The section 2(a) classification system thus achieves the result sought by Californians — protection against runaway property taxes based upon unrealized gain in property values. It clearly meets the Constitutional standard under the Equal Protection Clause that the challenged state action rationally further a legitimate state purpose or interest. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 55 (1973). Therefore, an Equal Protection challenge must fail.

#### **C. Proposition 13 Achieves The Additional Purpose Of Providing A Stable Tax Base.**

A third and equally important policy served by an acquisition value system is the stability and fiscal integrity the system provides to local government. That purpose was recognized by the California Court of Appeal in *R.H. Macy & Co. v. Contra Costa County*, 226 Cal.App.3d 352, 276 Cal.Rptr. 530 (1990), cert. granted, 111 S.Ct.

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<sup>10</sup>Cal. Rev. & Tax Code § 110(b) (West 1987).

2256, cert. dismissed, 111 S.Ct. 2923 (1991). While the other public purposes advanced by Proposition 13 may have been served by a different system as proposed by Petitioner, it is improbable that a different system would have provided a stable, growing tax base like that under an acquisition value system.

Since the adoption of Proposition 13, property tax revenues have grown at a relatively steady growth rate, averaging approximately 10.5% compounded annually from 1978-1979 to 1988-1989.<sup>11</sup> The acquisition value system contains much less of the volatility of the ad valorem system. A study developed by Amicus from reports published by the State Board of Equalization<sup>12</sup> and reproduced here as Appendix A, reveals that the property tax under the old system in California was 2.9 times more volatile than the system under Proposition 13. The California income tax system is 5.8 times more volatile.

When Proposition 13 was adopted, it was feared that the system would undermine concepts of fair taxation by shifting the burden away from business and onto homeowners. That has not occurred.<sup>13</sup> Further, there has apparently been no dramatic decrease in the numbers of properties transferred, (and thus reassessed) after Proposition 13.<sup>14</sup> Properties with 1975 value bases have de-

clined to approximately one-third of all properties.<sup>15</sup> As one commentator has so aptly stated, "the acquisition value assessment structure of Proposition 13 provides a sturdy floor to support continued growth and property tax revenues."<sup>16</sup>

#### **D. The Adoption of Proposition 13 Reflected California Voters' Rejection of An *Ad Valorem* System.**

A basic fallacy in Petitioner's reasoning is the assumption that the *ad valorem* system based on current market values is the perfect system by which all other systems must be measured. In fact, the experience in California with a current market value system prior to Proposition 13 does not support that assumption. An *ad valorem* system is by its nature arbitrary since its basis is an annual value judgment. Thus, the stated goal of annual current market value assessment is seldom achieved, and, in California, was certainly not the practice.<sup>17</sup> Reports of the California State Board of Equalization for the years

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<sup>11</sup>See Koch at 30.

<sup>12</sup>See California State Board of Equalization, *Annual Reports*, 1958-59 through 1989-90.

<sup>13</sup>Senate Commission Report at 36.

<sup>14</sup>K. Hahn, Los Angeles County Assessor, *1991-1992 Roll Release 18* (July 29, 1991). The number of annual transfers in Los Angeles County increased steadily from 255,800 in 1983-84 to 432,700 in 1988-89, but has declined in 1990-91 to 365,600, presumably because of a weak real estate market.

<sup>15</sup>*Id.* at 16. In Los Angeles County in 1991, approximately 33.89% of single family residences retained a 1975 base year value, compared to 33.0% of residential income properties and 36.1% of commercial and industrial properties.

<sup>16</sup>Koch at 30. Local governments have found new discretionary taxes and fees to replace lost revenues. The taxes and fees are also not based on a current market value system. *Cal-Tax Research Bulletin* (October 1991).

<sup>17</sup>In 1966, the Assembly Committee on Revenue and Taxation announced: "Based on the latest available data from the State Board of Equalization, pure equalization of all assessments is more a myth than a reality.... The assessor is faced with an impossible task of completely and accurately appraising all property in his jurisdiction." Assembly Committee on Revenue and Taxation, *Problems of Property Tax Administration in California* 20 (December 1966) (hereinafter cited as "Assembly Committee Report").

just prior to the adoption of Proposition 13 show widely disparate deviations from current value by California assessors.<sup>18</sup> Assessors were generally unable to cope with reassessments caused by rapid inflation. The result was periods of undervaluation followed by substantial catch-up assessments, which resulted in large tax increases for property owners.<sup>19</sup> The trust of Californians in an *ad valorem* system had already been eroded by a series of scandals in assessor's offices in California.<sup>20</sup> Faced with this experience under an *ad valorem* system, it is of little wonder that California property owners adopted the certainty and stability of an acquisition value system.

The acquisition value system may not be perfect and in some instances may not be entirely fair. Perfection and complete fairness, however, are not Constitutional requirements. The acquisition value system of Proposition 13 serves reasonable public purposes and is founded on a rational basis. Therefore, it is clearly valid under the Equal Protection Clause of the Fourteenth Amendment.

## II.

### **The Decision of this Court in *Allegheny Pittsburgh* Does Not Support the Contention that Proposition 13 Violates the Equal Protection Clause.**

The decision of this Court in *Allegheny Pittsburgh Coal Co. v. County Commissioner of Webster County, West Virginia*, 488 U.S. 336 (1989), determined that the assessor of Webster County could not arbitrarily adopt a system of

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<sup>18</sup>California State Board of Equalization, *Annual Reports*, 1975-76 through 1977-78.

<sup>19</sup>*Task Force Report* at 197.

<sup>20</sup>See *Assembly Committee Report* at 8-9.

assessing properties on the basis of their acquisition price where the West Virginia Constitution required that all property be assessed on the basis of its current market value. There was clearly no public policy advanced by the Webster County system since it was completely contrary to state law. No rational basis argument was, or indeed could have been, offered. The taxpayer, then, was clearly discriminated against when compared with the treatment afforded homeowners of comparable properties that had not recently been sold. The problem, however, was that the taxpayer's properties were valued at the time in question in accordance with state law. The issue thus raised was whether, under those circumstances, the taxpayer had the right to have its assessments reduced to a level comparable to those of similar properties, or whether it was relegated to having the assessments of other taxpayers raised to the proper level. The Supreme Court of Appeals of West Virginia, although apparently not disputing the inequality in assessments, chose the latter remedy, thereby leaving the taxpayer in a position of having no effective remedy.

This Court, in accordance with a long line of cases offering similar relief,<sup>21</sup> held that the taxpayer "may not be remitted by the State to the remedy of seeking to have the assessment of the undervalued property raised." *Allegheny Pittsburgh*, 488 U.S. at 346. Thus, the taxpayer whose assessment, although conforming with state law, is discriminatory when compared to the assessments of comparable taxpayers rendered in violation of state law, will have an effective remedy and will not be left to the

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<sup>21</sup>See, e.g., *Hillsborough v. Cromwell*, 326 U.S. 620 (1946); *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923); *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350 (1918).

unreasonable task of attempting to have the offending assessments raised to their proper level.

The circumstances presented in *Allegheny Pittsburgh* are clearly different than those presented by California's acquisition value system. Petitioner's assessment in this matter was made in accordance with California law. There is no indication that the assessments of the other properties to which Petitioner refers in an effort to show unequal treatment were made other than in accordance with California law. That law, as discussed above, has a rational basis. The practices of the assessor in Webster County were not made in accordance with state law, and therefore served no public policy. West Virginia had not intended to classify taxpayers for any sound or reasonable purposes. Under West Virginia law, there was only one class of taxpayer. Each taxpayer's property was required to be assessed at current market value. Since the challenged method resulted in unequal and discriminatory treatment among taxpayers in the same class, the practice was defective on Equal Protection grounds. California, on the other hand, has clearly created a system of classifications to further sound public policies. Petitioners have presented no evidence of unequal or discriminatory treatment among taxpayers of the same class. Consequently, there is no infirmity in the California system on Equal Protection grounds.

All property tax systems need not be measured against one based upon current market values. That is clearly not a Constitutional mandate. Equal Protection limitations do not "prevent variety in methods of taxation or discretion in the selection of subjects, or classification for purposes of taxation of either properties, business, trades, callings, or occupations." *Brown-Forman Co. v. Kentucky*, 217 U.S. 563, 572 (1910). Indeed, this Court

has never attempted to prescribe a "single constitutionally mandated method of taxation." *Goldberg v. Sweet*, 488 U.S. 252, 261 (1989), quoting *Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159, 171 (1983).

Absolute equality in an *ad valorem* system would be achieved only if property were revalued each year based on the latest market developments, an almost hopeless possibility. "Seasonal attainment of rough equality" in an *ad valorem* system might occur through a cyclical reassessment system that requires reassessment to statutory standards within reasonable timeframes. "Seasonal attainment of rough equality" in an acquisition value system, however, can only be achieved within the classifications established by law; i.e., in California, by comparison of assessments of properties acquired on the same date. There is no indication that Petitioner has been discriminated against vis-a-vis other and similarly situated taxpayers *in her class*.

## CONCLUSION

California's acquisition value system under Proposition 13 was adopted to achieve valid public policy goals. Therefore, the system is valid under any legitimate Equal Protection analysis. To hold otherwise would require a finding by this Court that all property taxes must be based upon a current market value system. Such a finding would require interference in matters of state taxation to a degree never before hinted. Amicus believes the public policies advanced by Proposition 13 are vital to the continued fiscal integrity and growth of California. Therefore, Amicus joins with Respondent in requesting that the judgment of the California Court of Appeal be affirmed.

Respectfully submitted,

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## **APPENDIX A**

## APPENDIX

Variance of % Change		6449 to 80481 to 89.90	77.78
Property Tax Std Deviation	—	0.0472	0.0165
Income Tax Std Deviation	—	0.0950	5.8 times more volatile than current property tax

Property and Income Taxes (Dollars in Thousands)				
Year	Property Tax Levies	% Change	Income Tax Collections	% Change
1958-59	1,807,932	—	—	—
1959-60	1,990,497	10.1%	—	—
1960-61	2,195,588	10.3%	—	—
1961-62	2,414,617	10.0%	—	—
1962-63	2,606,131	7.9%	—	—
1963-64	2,805,152	7.6%	—	—
1964-65	3,057,579	9.0%	—	—
1965-66	3,367,736	10.1%	—	—
1966-67	3,760,608	11.7%	—	—
1967-68	4,110,742	9.3%	952,487	—
1968-69	4,569,986	11.2%	1,101,691	15.7%
1969-70	4,935,475	8.0%	1,152,053	4.6%
1970-71	5,721,672	15.9%	1,264,383	9.6%
1971-72	6,372,331	11.4%	1,785,618	41.2%
1972-73	6,819,077	7.0%	1,884,058	5.5%
1973-74	6,647,769	-2.5%	1,829,385	-2.9%
1974-75	7,303,411	11.1%	2,579,676	41.0%
1975-76	8,304,125	12.5%	3,086,611	19.7%
1976-77	9,376,391	12.9%	3,761,356	21.9%
1977-78	10,276,725	9.6%	4,667,887	24.1%
1978-79	4,909,760	-52.2%	4,761,571	2.0%
1979-80	5,661,081	15.3%	6,506,015	36.6%
1980-81	6,360,276	12.4%	6,628,694	1.9%
1981-82	7,165,005	13.0%	7,483,007	12.9%
1982-83	8,007,037	11.4%	7,701,099	2.9%
1983-84	8,634,771	7.8%	9,290,279	20.6%
1984-85	9,437,483	9.3%	10,807,706	16.3%
1985-86	10,274,050	8.9%	11,413,040	5.6%
1986-87	11,125,581	8.3%	13,924,527	22.0%
1987-88	12,203,544	9.7%	12,950,346	7.0%
1988-89	13,307,539	9.0%	15,886,361	22.7%
1989-90	14,720,218	10.6%	16,903,654	6.4%

### Property Tax Revenue Growth Yearly % Changes After Prop 13

